

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JUANITA VERA,)	CHARGE NO: 2001 CF 2540
)	EEOC: 21 BA 11732
Complainant,)	ALS NO: 11805
)	
and)	
)	
PARTYLITE GIFTS, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

Complainant, Juanita Vera, filed a charge with the Illinois Department of Human Rights (IDHR) on May 7, 2001. The Charge alleged that she was harassed, retaliated against and constructively discharged after she ended a consensual sexual relationship with Respondent's supervisor.

Respondent failed to attend the IDHR's scheduled fact finding conference. As a result, the IDHR found Respondent to be in default and filed a Petition for Hearing to Determine Complainant's Damages. On June 12, 2002, the Illinois Human Rights Commission entered an order of default against Respondent, Partylite Gifts, Inc. and the matter was transmitted to the Administrative Law Section for hearing on the issue of damages and for further proceedings not inconsistent with the order. On June 25, 2002, the administrative law judge entered an order that was duly served upon the parties setting the matter for hearing on damages for September 5, 2002, at 9:30 a.m.

On September 5, 2002, Complainant appeared pro se, while Respondent failed to appear or otherwise explain their failure to appear. The issue of damages being heard and

the transcript of the proceeding having arrived, this matter is ripe for decision.

FINDINGS OF FACT

The facts marked with asterisks are facts which were alleged in the Department Charge. Those facts were admitted as a result of a finding of default against Respondent by the Department. The remaining facts are those which were proven by a preponderance of the evidence at the public hearing on this matter. Assertions made at the public hearing which are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Complainant is pro se.
2. Complainant filed a charge with the Illinois Department of Human Rights on May 7, 2001.
3. On June 12, 2002, the Illinois Human Rights Commission entered an order of default against Respondent.
4. On June 25, 2002, an order was entered setting the matter for a public hearing on damages for September 5, 2002. The parties were duly served notice of the hearing.
5. On September 5, 2002, Complainant appeared for the hearing, while Respondent failed to appear. The matter was heard.
6. Complainant was harassed, retaliated against and constructively discharged by Respondent after she ended a consensual sexual relationship with Respondent's supervisor, Antonio Ocasio.*
7. Complainant has been out of work for approximately 72 weeks and was being paid \$250.00 per week as of the date of her constructive discharge.

8. Complainant would have continued to work for Respondent if not for the constructive discharge.

CONCLUSION OF LAW

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(1)(c), respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Because of the default order entered in this matter, Respondent has admitted the allegations of the Department Charge that Complainant was harassed, retaliated against and constructively discharged after she ended a consensual sexual relationship with Respondent's supervisor, in violation of Section 2-102(D) of the Act.

4. Complainant is entitled to the sum of \$18,000.00 for back pay for a 72 week period at \$250.00 per week.

5. Complainant is entitled to reinstatement of her prior position with Respondent.

DISCUSSION

On June 12, 2002, a panel of the Human Rights Commission entered an order of default against Respondent. As a result, there are no liability issues to discuss. Only damages issues remain to be determined.

A prevailing complainant is presumptively entitled to reinstatement to the job lost because of unlawful discrimination. **Anderson and National Railroad Passenger Corp.**, 2 Ill. HRC Rep. 124 (1981). Complainant should be reinstated to her previously

held position or to a substantially equivalent position. Her pay, benefits and seniority should be the same as they would have been if she had not left Respondent's employ.

Complainant also is entitled to an award of back pay. Complainant testified that she earned \$250.00 per week with Respondent. Under Commission case law, ambiguities involving back pay amounts should be resolved against the discriminating employer.

Clark v. Human Rights Commission, 141 Ill.App.3d 178, 490 N.E.2d 29 (1st Dist. 1986). Therefore, the \$250.00 figure will be used to calculate back pay.

Respondent was constructively discharged as of April 23, 2001. From the date of her discharge to the date of the damages hearing, Complainant would have worked 72 weeks. Thus, Complainant would have earned approximately \$18,000.00. Complainant has indicated that she had not worked since her discharge with Respondent. While Complainant is required to make reasonable efforts to seek employment after her discharge, Respondent has the burden of proving that Complainant failed to mitigate her damages. **ISS International Service System, Inc. v. Illinois Human Rights Commission**, 209 Ill.Dec. 414, 651 N.E.2d 592, 598 (Ill.App. 1st Dist. 1995). In this instance, Respondent did not appear for the damages hearing and did not attempt to prove that Complainant did not mitigate her damages.

Also, since Complainant was unemployed as of the time of the damages hearing, back pay liability continues to accrue. As a result, Respondent should pay Complainant \$250.00 per week from the date of the damages hearing until Respondent offers her reinstatement.

Because she has had to wait for the damages to which she is entitled, prejudgment interest is necessary to make Complainant whole. Such interest is recommended.

In addition, Respondent should be ordered to clear Complainant's personnel records of reference to this case. Finally, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of sex.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

- A. That Respondent reinstate Complainant to her former position, or to a substantially equivalent position, at the rate of pay and with the seniority and benefits (including pension benefits) she would have had if she not left Respondent's employ;
- B. That Respondent pay to Complainant the sum of \$18,000.00 for lost back pay through the date of the damages hearing.
- C. That back pay continue to accrue at the rate of \$250.00 per week from the date of the damages hearing until Respondent offers Complainant reinstatement;
- D. That Respondent pay to Complainant prejudgment interest on all amounts awarded, such interest to be calculated as set forth in 56 Ill. Admin. Code, Section 5300.1145;
- E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;
- F. That Respondent be ordered to cease and desist from further acts of unlawful discrimination.

HUMAN RIGHTS COMMISSION

BY: _____

NELSON E. PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: October 15, 2002